

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELALTE SIDE

WRIT PETITION NO.10900 OF 2004

Dilipkumar R. Tiwari & Ors.

...Petitioners.

Vs.

Shashikant Gordhandas Mehta & Ors.

...Respondents.

....

Mr. R. S. Dwivedi for the Petitioners.

Mr.G. S. Godbole for Respondent No.1 to 5.

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CORAM : [DR.D.Y.CHANDRACHUD](#), J.

June 17, 2005.

P.C.:

A declaratory suit filed by the predecessor-in-interest of the Petitioner has been dismissed while a suit for eviction filed by the Respondents as Trustees of a Public Charitable Trust has been decreed. The findings of the Learned Trial Judge in the Court of Small Causes have been affirmed in appeal by the Appellate Bench of the Court of Small Causes. The Original Defendant in the suit for eviction, Radheshyam Tiwari, was an employee of the Public Trust in question. He was appointed as a Chowkidar sometime in 1950. There is no dispute about this factual position

and none is raised before this Court. The services of the employee were terminated by a notice dated 22<sup>nd</sup> July 1979. Radheshyam thereupon filed a declaratory suit, R. A. D. Suit No.3836 of 1979, claiming that his father had acquired tenancy in respect of the suit premises. Both the Courts below have noted that there is absolutely no evidence before the Court to support the case of tenancy. There is no rent note evidencing the creation of tenancy and no rent receipt. The case of Radheshyam, to the effect that the trust did not issue any rent receipts though he paid rent, has been disbelieved. The Trial Court as well as the Appellate Bench of the Court of Small Causes considered all the documentary material. Both these Courts noted that the documents which were produced related to the period after 1955 and most of them were for the period after the institution of the suit. There was no dispute about the occupation of the premises in 1955 because in any case Radheshyam was appointed as a Chowkidar in 1950. The solitary document on which a significant amount of reliance is placed in the course of submissions in these proceedings is a voters' list issued by the Bombay Municipal Corporation. The voters' list was for the

period 20<sup>th</sup> December 1947 to 19<sup>th</sup> December 1951 and the name of Radheshyam's father was entered by the Bombay Municipal Corporation. The Trial Court held that a voters' list which is valid for a particular period, in this case for 1947 to 1951, does not necessarily reflect occupation since the inception of the period to which the voters' list relates and, in any event upon the appointment of Radheshyam as Chowkidar in 1950, there was every reason for the voters' list for the period 1947 to 1951 to incorporate an entry. These are findings which were arrived at by both the Courts. In any event, the mere existence of an entry in the voters' list would not establish a case of tenancy. A tenancy has to be proved by material facts and circumstances which must have a bearing on the existence of the tenancy. In the present case, there is absolutely no evidence of the creation of tenancy or of the continuation thereof. The Appellate Bench has, in my view, quite correctly arrived at the conclusion that the building in question was a Dharmashala constructed in 1933 pursuant to a scheme framed by the High Court to provide temporary accommodation for a period of eight days to visitors to the city and it is difficult to

believe that an employee or his father would be inducted as a tenant.

2. The conclusion which has been arrived at by the Courts below to the effect that no tenancy was created in favour of Radheshyam's father is correct and does not warrant interference under Article 227 of the Constitution. Radheshyam was an employee of the Trust and upon the termination of his services, he was duty bound and liable to hand back the property of the Trust which was in his occupation and possession.

3. There is, in the circumstances, no merit in the petition which is accordingly dismissed. On the request of Counsel appearing on behalf of the Petitioners, the execution of the decree for eviction shall remain stayed until 30<sup>th</sup> September 2005 so as to enable the Petitioners to have recourse to their remedies against this judgment. Counsel appearing on behalf of the Petitioners states before the Court that the Petitioners shall not, in the meantime, part with the possession of the premises or create any

right, title or interest in favour of any third party and that an affidavit to that effect shall be filed before this Court within a period of one week from today of all the adult members of the family in the occupation of the premises in the aforesaid terms.

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